

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

WILLIE McNAIR,

Plaintiff,

V.

**RICHARD ALLEN, Commissioner,
Alabama Department of Corrections,
And GRANTT CULLIVER, Warden,
Holman Correctional Facility**

Defendants.

No. 2:06-cv-00695-WKW-SRW

MOTION TO CONSOLIDATE AND FOR SPEEDY HEARING

Defendants Richard Allen, in his official capacity as Commissioner of the Alabama Department of Corrections, and Grantt Culliver, in his official capacity as Warden of the Holman Correctional Facility (“Defendants”), who are also counter-plaintiffs in this action, respectfully move this Court pursuant to Rule 42(a) of the Federal Rules of Civil Procedure to consolidate this action with a similar suit pending in this Court, styled as *James Callahan v. Richard Allen, et al.*, 2:06-CV-919-WKW. Defendants further move pursuant to Rule 57 that this Court order a speedy hearing and advance the consolidated cases on its calendar. In support of this motion, Defendants state as follows:

1. Both this action and the *Callahan* case involve a challenge to the constitutionality of Alabama's procedures for enforcing a death sentence, and both cases include a counterclaim by the Defendants for a declaratory judgment. Defendants deny the plaintiffs' claims. The two cases involve common questions of law and fact.

2. The same counsel represent the plaintiffs in each case and the same counsel represent the defendants in each case. The cases are assigned to the same District Judge.

3. The cases will involve the same evidence and witnesses. To the extent the Court permits discovery, the discovery will be duplicative if the cases are not consolidated.

4. Consolidation will promote judicial economy and convenience and will avoid delay. Consolidation will not prejudice any party.

5. Pursuant to F.R.C.P. 57, this Court has discretion to order a speedy hearing in a declaratory judgment action. The nature of proof in this action and the interests of the State weigh in favor of a speedy hearing.

6. In *Hill v. McDonough*, ___ U.S. ___, 2006 WL 1584710, at *8 (June 12, 2006), the United States Supreme Court acknowledged the rights of “[b]oth the State and the victims of crime” to the timely enforcement of a death sentence. *Id.* at *8. *See also, e.g., Grayson v. King*, ___ F.3d ___, 2006 WL 2382522 (11th Cir. Aug. 18, 2006).

7. McNair and Callahan have each been on Alabama’s Death Row for more than fifteen years. Each has exhausted his rights of review under state and federal law.

8. There are limited issues in these cases. Discovery can be handled quickly, to the extent discovery is permitted by the Court, and a speedy hearing will not prejudice the rights of any party.

WHEREFORE, Defendants move that this Court consolidate this action and action number 2:06-CV-919 and set both cases for a consolidated, speedy hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 1st day of November, 2006, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following:

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